XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(15)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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| | APPELLANT/ ACCUSED (In Jail) | Jarhu Ram, Aged 51 years, Son of Mangal Ram Lakda, Resident of Village Khamhar, Junapara, P.S. Dharamjaigarh, District Raigarh, MP (now CG). |
| | | -Versus- |
| | RESPONDENT | State of M.P. (now Chhattisgarh), Through P.S. Dharamjaigarh, District Raigarh, MP (now CG). |

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Present :- Shri Rajesh Tiwari, counsel for the appellant.
Shri Sudhir Bajpai, Dy. Govt. Advocate for the State.

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DB: - **HON'BLE SHRI L.C. BHADOO &**
**HON'BLE SHRI DHIRENDRA MISHRA, JJ.**

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ORAL JUDGMENT
(Delivered on 24th April, 2007)

**L.C. Bhadoo, J**

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 18-1-1999 passed by First Additional Sessions Judge, Raigarh, in Sessions Trial No.108/98 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of his wife Bilaso Bai and sentenced him to undergo imprisonment for life.

2) The case of the prosecution, in brief, is that accused Jarhu Ram & Bilaso Bai (since deceased), wife of Jarhu Ram, had consumed liquor and when they were in the forest near village Kamosindan they started

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| | quarrelling. The accused attacked Bilaso Bai with lathi & stone as a result of which she became unconscious. Accused returned to village Kamhar, informed Mohan (PW-4), Sukhram (PW-16), Sugi Bai (PW-5) and other villagers that Bilaso Bai had sustained injuries on account of falling on a stone. Thereafter, accused along with villagers reached to the spot and brought Bilaso Bai to his residence. In the night, she succumbed to the injuries. Accused along with Ishwar Prasad Rathia (PW-15) went to Police Station Dharamjaigarh and intimation was given. Based on that, Head Constable Nandram, registered crime No.14/98 under Ex.P/16. After giving notice (Ex.P/1), inquest (Ex.P/2) on the body of Bilaso Bai was prepared by the Investigating Officer. Body of Bilaso Bai was sent for postmortem examination to the Hospital where Dr. Anil Kumar (PW-11) conducted postmortem and prepared report (Ex.P/11). Doctor opined that the cause of death was injuries. Based on that, First Information Report (Ex.P/17) for the commission of offence punishable under Sections 302 & 201 of the Indian Penal Code was registered.<br><br>3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dharamjaigarh, who in turn committed the case to the Court of Sessions Judge, Raigarh, from where learned First Additional Sessions Judge, Raigarh, received the same on transfer for trial.<br><br>4) In order to establish the charge against the accused/appellant, the prosecution examined 16 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the case. | |

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5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties.

7) In this case, all the witnesses have turned hostile. There is no ocular or direct evidence in order to connect the accused with the crime in question.

8) Learned counsel appearing for the State argued that the accused himself reported the matter under Ex.P/16 that Bilaso Bai died on account of injuries sustained by her on falling on a stone whereas as per the Doctor's opinion the injuries were caused by lathi & stone, which were recovered at the instance of the accused.

9) Having heard learned counsel for the parties, we have perused the evidence. It has come in the evidence that the deceased was in the habit of consuming liquor. Dr. Anil Kumar (PW-11), in para 10 of his statement, has stated that the injuries which were on the face and head could be caused on falling after consuming liquor.

10) As far as recovery of stone & lathi is concerned, these are the common articles, which are found everywhere. There is no report that these articles were stained with blood and the blood was of the group of the deceased. Therefore, there is no legal clinching evidence in order to connect the accused with the crime in question. As such, the prosecution has failed to establish the charge against the accused beyond reasonable doubt.

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| Gowri | 11) For the foregoing reasons, we are of the considered opinion that the conviction & sentence imposed against the accused/appellant cannot be sustained.<br><br>12) In the result, the appeal succeeds. Conviction & sentence imposed upon the accused/appellant under Section 302 of the Indian Penal Code are set aside; he is acquitted of the said charge. The accused is in detention since 3-5-1998. He be set at liberty forthwith, if not required in any other case.<br><br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge** | **Sd/-**<br>**Dhirendra Mishra**<br>**Judge** |